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Written Testimony in Support of House Bill 5217 An Act Concerning Use of Unmanned Aircraft

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Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee, I am David McGuire, staff attorney for the American Civil Liberties Union of Connecticut. I'm here to testify in favor of House Bill 5217, An Act Concerning Use of Unmanned Aircraft. This thoughtful and timely legislation will permit Connecticut law enforcement to use unmanned aerial vehicles, more commonly known as drones, in emergencies or with court oversight for legitimate law enforcement investigations. It will prohibit their indiscriminate use to invade the privacy and violate the constitutional rights of innocent people. The ACLU of Connecticut appreciates the committee's consideration of this important issue.

A drone is any remote-controlled or pre-programmed unmanned aircraft, but in its most ubiquitous form a drone is essentially a small, flying camera—inexpensive, highly maneuverable and capable of unprecedented invasions of personal privacy. Drones can carry a variety of high-powered surveillance equipment, including high-resolution video cameras, microphones, night-vision cameras and infrared or heat-sensing devices that can literally see through walls, as well as facial recognition technology, radar and license plate readers. They can also carry weapons, including Taser-like devices and tear gas.

This is not the aerial surveillance we're used to, not an airplane flying thousands of feet above a neighborhood. Drones can get very close to the ground, to buildings and to people without being detected. They can hover outside a window and record what happens inside your house. They can take high-resolution video of your family in your yard and record your conversations. Drones turn aerial surveillance into ground-level spying, and they can take police into places where the Constitution expressly forbids them to set foot without permission or a warrant, unless there is an emergency. This bill recognizes that when police have probable

cause they can obtain a warrant to use a drone. The bill also explicitly allows police to immediately deploy drones in emergencies.

Now is the time to regulate drones. Next year a federal law will require the Federal Aviation Administration (FAA) to open U.S. airspace to drones. The FAA predicts there will be 30,000 of them buzzing around the nation's skies within 15 years.¹ Unlike manned airplanes and helicopters, which are expensive to purchase, operate and maintain, drones are affordable. They require no licensed pilots, hangars or runways. Before law enforcement agencies in Connecticut deploy these powerful devices, it is incumbent upon the Connecticut General Assembly to ensure that we reap the benefits of this burgeoning technology without jeopardizing our core privacy rights.

Law enforcement officials may claim the right to operate drones for individual surveillance without a warrant, based on U.S. Supreme Court rulings in the 1980s that permitted manned aerial surveillance from airplanes and a helicopter without a warrant. But the Supreme Court has signaled that the rapid evolution of technology has changed the playing field. While the Court has not yet specifically addressed drones, it recently issued a meaningful ruling on another form of advanced surveillance technology. In *United States v. Jones*, the Court found that police conducted an unlawful search and seizure in violation of the Fourth Amendment when they deployed a GPS device to track a suspect's vehicle without a warrant.² Significantly, Justice Alito, in a concurrence joined by three other justices, wrote: "in circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative."³

This is a well-crafted bill that will bring public policy up to speed with technology before drones are unleashed. It requires judicial oversight to ensure that Connecticut law enforcement will use this helpful and powerful technology in appropriate circumstances and in proper scope. It mandates reporting on law enforcement's use of drones to provide the means for the public and legislators to evaluate how well the regulations are working in their communities. The requirement that all video and data unrelated to the specified target be deleted promptly will protect the privacy of innocent individuals. The prohibition on equipping law enforcement drones with weapons will protect the public from potentially deadly abuses.

¹ https://www.faa.gov/data_research/aviation/aerospace_forecasts/2010-2030/media/Unmanned%20Aircraft%20Systems.pdf

² <http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf>

³ *Id.*

This bill also mandates the promulgation of private drone regulations. Such regulations must be as well-reasoned and thoughtful as the legislation now before you. They must be narrowly drawn in response to specific harms that private use would cause, recognizing that the Constitution protects citizens from the government, not the other way around. The regulations must protect the constitutional right of the public to photograph anything visible from a public vantage point—including and in particular government activity. If any regulation targets only certain speakers or viewpoints, it will be subject to the highest level of constitutional scrutiny and will likely be deemed unconstitutional under the First Amendment.

Please take this opportunity to pass this common-sense bill, which comports with the Fourth Amendment and ensures that Connecticut can enjoy the benefits of drone technology without becoming a surveillance society.